(16)

HIGH COURT OF CHHATTISGARH AT BILASPUR

M.C.C. No. 211 of 2006

APPLICANT M/s Shyamlal Agrawal

VERSUS

NON-APPLICANTS The Chairman cum Managing Director and others

POST FOR ORDER ON 17 -12-2007

Sd/-
Dhirendra Mishra
Judge

HIGH COURT OF CHHATTISGARH AT BILASPUR

M.C.C. No. 211 of 2006

APPLICANT M/s Shyamlal Agrawal, through : Shyam Lal Agrawal, S/o Shri R.K. Agrawal, aged about 55 years, presently residing at : Nehru Nagar, Ameri Road, Bilaspur (CG)

VERSUS

NON-APPLICANTS

1. The Chairman cum Managing Director, South Eastern Coalfields Limited, Seepat Road, P.O. SECL, Bilaspur (CG)
2. The General Manager (Civil), South Eastern Coalfields Limited, Seepat Road, PO: SECL, Bilaspur (CG)
3. The Chief General Manager, South Eastern Coalfields Limited, Sohagpur Area, PO: Dhanpuri Colly, Distt: Shahdol (MP)

Present:

Shri Anand Tiwari, Advocate, for the applicant.

Dr. N.K. Shukla, Sr. Advocate with Ku. Ritu Mishra, Advocate for the non-applicants.

O R D E R

(Passed on 7 / 12/2007)

Dhirendra Mishra, J

The petitioner by this petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 (for brevity hereinafter referred to as the Act of 1996) has prayed for appointment of sole arbitrator with the averment that the petitioner was awarded a contract for execution of the work for construction of Haul Road Ramp at Dhanpuri OCM, Phase-II, Sohagpur Area by the respondents vide work order dated 10th December, 1989. The period allowed for completing the work was 9 months and time was essence of the contract. There had been delay in execution of work for the reasons attributable to the respondents and the work could be completed only on 11th March, 1991. Payments were delayed against running account bills, though revised estimate for finalization of the contract was prepared and processed but the outcome of the same was not intimated to the petitioner. They had been requesting for finalization of the contract and approval and because of act of omission and commission on the part of the respondents, the applicant sustained losses and damages.

2. The agreement entered into between the parties contains arbitration clause at para 9 of General Conditions of the contract and

as per the appointment procedure in the arbitration clause, all disputes or differences whatsoever arising between the parties out of or relating to the construction meaning and operation or effected of this contract or breach thereof shall be settled by a sole arbitrator appointed by CMD of South Eastern Coalfields Ltd. and the award of arbitrator shall be final and binding on the parties concerned and arbitration proceeding is to be governed by the Arbitration Act, 1940.

3. The petitioner vide notice dated 12th August, 2003 raised a dispute and claimed Rs. 16 lacs and further requested to appoint sole arbitrator to adjudicate the dispute. The District Judge in view of the judgment of the Hon'ble Supreme Court in the matter of ***SBP & Company –v- Patel Engineering Ltd. and another***[1] forwarded the matter to the High Court for adjudication vide his order dated 23rd January, 2006.

4. The respondents in their reply have raised a preliminary objection about the maintainability of this petition.

5. Learned counsel for the petitioner submits that existence of arbitration is not in dispute. The work was completed by the petitioner on 11th March, 1991, however the respondents committed breach of contract by not releasing the final bill. They had addressed communication dated 20th February, 1991 detailing the problems faced by them in the execution of the work and expressing their inability to continue the work in the old rate and demanded for material escalation, however this communication remained unreplied and ultimately they called upon the Chairman-cum-Managing Director, the competent authority for appointment of sole arbitrator within 30 days of the receipt of that notice as per Clause 9 of the Arbitration agreement. As they failed to appoint arbitrator, this petition has been filed.

6. On the other hand, learned Sr. Counsel appearing for the respondents argued that apart from other objections raised by the respondents in their reply regarding maintainability of the petition, from perusal of the averments made in the petition as also from the documents annexed with the petition, it is evident that the applicant on his own admission, completed the work of 11th March, 1991. Notice for appointment of arbitrator was issued after 12 years of the completion of work. In this long period of 12 years, no any claim or

[1] (2005) 8 SCC 618

dispute was raised by the applicant, and therefore, the instant petition is hopelessly barred by limitation and the applicant has tried to resurrect the dead claim.

7. I have heard learned counsel for the parties. I have perused the application along with the documents annexed with the petition.

8. The applicant has averred in the petition that the work was completed on 11th March, 1991. From perusal of the documents annexed with the application, it is observed that apart from the work order and agreement, the last correspondence annexed with this petition is dated 20th February, 1991 whereby the applicant has addressed the letter to the Sr. Executive Engineer (C), D.O.C.M. Sohagpur Area by which payment towards material escalation has been demanded. After the above communication, a notice dated 12th August, 2003 addressed to Chairman-cum-Managing Director, South Eastern Coalfields Limited has been sent by which apart from raising the claim of Rs. 16 lacs as compensation towards refund of security deposit, payment of work done and other losses sustained, the demand for appointment of sole arbitrator has also been made. Since the cause of action, if any, arose to the petitioner immediately after completion of the work on 11th March, 1991 and the claim was made & the dispute was raised and appointment of sole arbitrator was requested after 12 years, the present application for appointment of arbitrator is hopelessly time barred.

9. For the aforesaid reason, the petition is hereby dismissed.

Sd/-
Dhirendra Mishra
Judge